NO. 16-1276

IN THE
Supreme Court of the United States

DIGITAL REALTY TRUST, INC.,

Petitioner,

v.

PAUL SOMERS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF AMICI CURIAE NEW ENGLAND LEGAL FOUNDATION AND ASSOCIATED INDUSTRIES OF MASSACHUSETTS IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

Amici curiae New England Legal Foundation ("NELF") and Associated Industries of Massachusetts ("AIM") seek to present their views, and the views of their supporters, on whether this Court should grant certiorari to decide whether the whistleblower anti-retaliation provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), codified at 15 U.S.C. § 78u-6(h), applies to employees who have not reported a violation of the securities laws to the Securities and Exchange Commission, when Dodd-Frank defines a "whistleblower" as "any individual who provides . . . information relating to a violation of the securities laws to the [SEC]?" 15 U.S.C. § 78u-6(a)(6).[1]

NELF is a nonprofit, nonpartisan, public interest law firm, incorporated in Massachusetts in 1977, and headquartered in Boston. Its membership consists of corporations, law firms, individuals, and others who believe in NELF's mission of promoting balanced economic growth in New England, protecting the free enterprise system, and defending economic rights. NELF's members and supporters

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[1] Pursuant to Supreme Court Rule 37.6, amici state that no counsel for a party authored their amicus brief in whole or in part, and no person or entity, other than amici, made a monetary contribution to the preparation or submission of the brief.

Pursuant to Rule 37.2(a), amici state that they have provided counsel for each party with timely written notice of their intent to file this brief, and that counsel for each party has filed with the Court a blanket letter of consent to the filing of amicus briefs.

include both large and small businesses located primarily in the New England region.

AIM is a 100-year-old nonprofit, nonpartisan association, with over 4,500 employer members doing business in the Commonwealth. AIM's mission is to promote the well-being of its members and their employees, and the prosperity of the Commonwealth of Massachusetts, by improving the economic climate of Massachusetts, advocating fair and equitable public policy proactively, and by providing relevant and reliable information and excellent services.

Amici are committed to enforcing federal employment-related statutes according to their terms. When, as here, a statute provides a specific and unambiguous definition of a term, that definition must apply wherever the term appears in the statute. Any change to the statute must come from the Legislature, not the Judiciary.

In addition to this amicus brief, amici have filed many other related amicus briefs in this Court, arguing for the enforcement of federal statutes according to their terms.[2]

For these and other reasons discussed below, NELF and AIM believe that their brief will assist the Court in deciding whether to grant certiorari in this case.

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[2] *See, e.g.*, *Kellogg Brown & Root Servs., Inc. v. U.S., ex rel. Carter*, 135 S. Ct. 1970 (2015); *Lawson v. FMR LLC*, 134 S. Ct. 1158 (2014); *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S. Ct. 568 (2013); *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517 (2013).

SUMMARY OF ARGUMENT

At issue is the meaning of Dodd-Frank's protection of "a whistleblower . . . because of any lawful act done by the whistleblower . . . in making disclosures that are required or protected under the Sarbanes-Oxley Act [SOX] . . . ." 15 U.S.C. § 78u-6(h)(1)(A)(iii). Dodd-Frank defines a "whistleblower" as "any individual who provides . . . information relating to a violation of the securities laws to the [SEC] . . . ." 15 U.S.C. § 78u-6(a)(6). SOX, however, protects employees who report securities law violations to their employer. And the lower court interpreted the disputed language to mean that Dodd-Frank protects the employee who only reports a securities law violation to his employer, pursuant to SOX.

This Court should grant certiorari and decide, to the contrary, that the disputed language only protects the Dodd-Frank "whistleblower" (i.e., the employee who reports information to the SEC) who *also* reports that information to his employer and who then suffers retaliation for his internal reporting. The language is unambiguous and affords this one meaning only.

This language would apply when the employer does not know that the employee who has reported internally has also reported to the SEC. Without this disputed language, a Dodd-Frank whistleblower would not be protected under Dodd-Frank for his internal reporting. He would only be protected under SOX. The language therefore encourages an employee to report both internally and externally.

The lower court apparently rejected the statute's plain meaning as being "narrow[] to the point of absurdity . . . ." Appendix to Petitioner's Petition for Certiorari (App.) 8a. But it is not for the courts to pass judgment on congressional line drawing of this sort, however narrow it may appear. Nor is it a court's role to conform an unambiguous statute such as this one to the court's own notion of what Congress may have intended. Any change must come from Congress, not the courts.

In any event, protecting such a class of Dodd-Frank whistleblowers is hardly "absurd." Consistent with SOX's purposes, an employee may wish to report a potential violation to her employer, for speedy internal resolution of the matter. But, consistent with Dodd-Frank's purposes, the employee may also wish to alert the SEC to the matter, to secure her right to pursue Dodd-Frank's unique financial incentives (a potentially large bounty) and legal protections (including the right to recover double back pay). Nor is it "absurd" that an employer may not know that the employee who has reported a violation internally has also reported it to the SEC. Dodd-Frank and the SEC regulations preserve the confidentiality of a whistleblower's identity.

The Ninth Circuit engaged in impermissible judicial legislation, effectively by substituting the word "employee" for the defined term "whistleblower." But the statutory definition of "whistleblower" excludes all other possible meanings of that term. Moreover, Congress chose the word "employee" in SOX's whistleblower provision but did

not do so when it later enacted Dodd-Frank. It must be presumed that this choice was deliberate.

If allowed to stand, the lower court's decision would eviscerate Dodd-Frank's definition of a whistleblower. But it would also contravene Congress' purpose of linking Dodd-Frank's robust financial incentives with its robust remedial protections. In the lower court's view, an employee can sue for retaliation under Dodd-Frank even though he is not eligible for a bounty under that statute. But those incentives and remedies go hand in hand and were expressly limited to the employee who has earned them by reporting information to the SEC.

The lower court's approach could also render SOX's whistleblower provision virtually obsolete. Now any employee who reports internally could avoid suing under SOX and could sue instead under Dodd-Frank, to benefit from its unique remedial protections. But Congress indicated no such intent to undermine the viability of a SOX whistleblower claim when it enacted Dodd-Frank. To the contrary, Congress carefully *preserved* SOX's whistleblower provision in Dodd-Frank, by expanding SOX's administrative limitations period.

In effect, Congress has enacted a two-tiered statutory scheme for the protection of corporate whistleblowers. If the employee only reports to her employer, then SOX applies. If, however, the employee also reports to the SEC, then she is a "whistleblower" under Dodd-Frank and is eligible to receive a substantial bounty and substantial legal

protection for her efforts. Therefore, the Court should grant certiorari and rule that Dodd-Frank's anti-retaliation provision is limited, by its own plain terms, to the employee who reports information to the SEC.

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI AND DECIDE THAT THE DODD-FRANK ACT, BY ITS OWN PLAIN TERMS, ONLY PROTECTS EMPLOYEES WHO REPORT SECURITIES LAW VIOLATIONS TO THE SECURITIES AND EXCHANGE COMMISSION.

A. Dodd-Frank Defines A "Whistleblower" As An Employee Who Reports Information To The SEC, and This Definition Must Apply Each Time The Word "Whistleblower" Occurs In The Statute.

At issue is the meaning of language in the whistleblower anti-retaliation provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), that prohibits an employer from retaliating against "a whistleblower . . . because of any lawful act done by the whistleblower . . . in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 (15 U.S.C. § 7201 *et seq*.) ["SOX"]. . . ." 15 U.S.C. § 78u-6(h)(1)(A)(iii). The same provision defines a "whistleblower" as "any individual who

provides . . . information relating to a violation of the securities laws to the [SEC] . . . ." 15 U.S.C. § 78u-6(a)(6).

SOX, however, protects employees who report securities law violations to their employer. 18 U.S.C. § 1514A(a)(1)(C).[3] And the Ninth Circuit in this case interpreted the disputed language to mean that Dodd-Frank protects the employee who only reports securities law violations to her employer, pursuant to SOX. Appendix to Petitioner's Petition for Certiorari ("App.") 7a-10a.

This Court should grant certiorari and decide, to the contrary, that the disputed language only protects the Dodd-Frank "whistleblower" (i.e., the employee who reports information to the SEC) who *also* reports that information to his employer and who then suffers retaliation for his internal reporting. 15 U.S.C. § 78u-6 (a)(6). "When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning." *Stenberg v. Carhart*, 530 U.S. 914, 942 (2000).

[3] To be precise, SOX protects an employee from workplace discrimination when he reports to "(A) a Federal regulatory or law enforcement agency; (B) any Member of Congress or any committee of Congress; or (B) a person with supervisory authority over the employee . . . ." 18 U.S.C. § 1514A(a)(1)(A)-(C).

In particular, § 78u-6(h)(1)(A)(iii) provides:

> **(h) Protection of whistleblowers**
>
> **(1) Prohibition against retaliation**
>
> **(A) In general**
>
> No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, *a whistleblower* in the terms and conditions of employment *because of any lawful act done by the whistleblower*-- . . .
>
> **(iii)** *in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002* (15 U.S.C. 7201 *et seq*.) [SOX] . . . .

15 U.S.C. § 78u-6(h)(1)(A)(iii) (emphasis added).[4] SOX, it has been noted, protects an employee who

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[4] This subsection provides, in full:

> **(h) Protection of whistleblowers**
>
> **(1) Prohibition against retaliation**
>
> **(A) In general**
>
> No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner

reports a securities law violation to her employer. 18 U.S.C. § 1514A(a)(1)(C).

And so, making the necessary substitutions to this disputed statutory language yields the following result:

> No employer may . . . discriminate . . . against [any individual who provides . . . information relating to a violation of the securities laws to the [SEC]] . . . because of any lawful act done by th[at] [individual] . . . in making [internal] disclosures that are . . . protected under [SOX] . . . .

> discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower--
>
> **(i)** in providing information to the Commission in accordance with this section;
>
> **(ii)** in initiating, testifying in, or assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information; or
>
> **(iii)** in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq*.) [SOX], this chapter, including section 78j-1(m) of this title, section 1513(e) of Title 18, and any other law, rule, or regulation subject to the jurisdiction of the Commission.

15 U.S.C. § 78u-6(h)(1)(A)(i)-(iii).

15 U.S.C. § 78u-6(a)(6), (h)(1)(A)(iii). That is, Dodd-Frank protects an employee from retaliation when he "provides information . . . to the SEC" but also "mak[es] internal disclosures" of the same information to his employer, and his employer retaliates against him "because of" his internal disclosures.

B. The Disputed Statutory Language Affords Only One Meaning: The Employee Who Reports Information Both To His Employer And The SEC Is Protected From Retaliation Because Of His Internal Reporting.

The disputed statutory language is unambiguous and affords only one meaning. "[W]here, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (citation and internal quotation marks omitted). The language simply provides Dodd-Frank protection to the Dodd-Frank whistleblower who also reports that information to his employer and who then suffers retaliation for his internal reporting. This would apply when the employer does not know that the employee who has reported information internally has also reported that information to the SEC. *See Asadi v. G.E. Energy (USA), L.L.C.*, 720 F.3d 620, 627-28 (5th Cir. 2013) (discussing same). Without this disputed language, a Dodd-Frank whistleblower would not be protected under Dodd-Frank for his internal

reporting.[5] He would only be protected under SOX. *See* 18 U.S.C. § 1514A(a)(1)(C). And so this language encourages the employee to report potential violations both to his employer and the SEC.

The Ninth Circuit was apparently unwilling to accept the plain meaning of § 78u-6(h)(1)(A)(iii). Indeed, the lower court rejected this protected class of Dodd-Frank whistleblowers as being "narrow[] to the point of absurdity . . . ." App. 8a. But it is not for the courts to pass judgment on congressional line drawing of this sort, however narrow it may appear. "Our task is to apply the text, not to improve upon it." *Pavelic & LeFlore v. Marvel Entm't Grp.,* 493 U.S. 120, 126 (1989). After all, in matters of economic regulation, Congress is free to define a protected class as narrowly as it chooses. "[Legislative] reform may take one step at a time." *United States v. Morrison*, 529 U.S. 598, 631 n.2 (2000) (citation and internal quotation marks omitted).[6] *See also Great-W. Life & Annuity Ins. Co.*

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[5] *See* n.4, above. The other categories of protected activity under Dodd-Frank apply only when an employee has supplied information to the SEC or has participated in an SEC enforcement action based on that information. *See* 15 U.S.C. § 78u-6(h)(1)(A)(i)-(ii).

[6] By the same token, it should be of no consequence here that auditors and attorneys may not qualify for protection under § 78u-6(h)(1)(A)(iii), due to those professionals' internal reporting obligations under SOX that might delay or preclude them from reporting the same information to the SEC. *See* App. 6a-7a (Ninth Circuit discussing same as reason for extending § 78u-6(h)(1)(A)(iii) to employees who make only internal reports). In any event, auditors and attorneys would still be protected under SOX for their internal reporting. 18 U.S.C. § 1514A(a)(1)(C).

v. Knudson, 534 U.S. 204, 217–18 (2002) ("It is, however, not our job to find reasons for what Congress has plainly done; and it *is* our job to avoid rendering what Congress has plainly done [here, to extend legal protection to the employee who reports both to the SEC and his employer] devoid of reason and effect.").

Nor is it a court's role to "rewrite" an unambiguous statute to fit the court's own notion of what Congress may have had in mind, as the Ninth Circuit did here when it extended the disputed language to employees who are not Dodd-Frank whistleblowers. "It is not our role to conform an unambiguous statute to what we think Congress probably intended . . . ." *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009) (internal quotation marks omitted).

C. Dodd-Frank's Protection Of The Employee Who Reports Both To His Employer and The SEC Serves The Statute's Purpose Of Motivating Corporate Insiders To Assist The SEC In Its Law Enforcement Efforts.

In any event, Dodd-Frank's protection of employees who report both to the SEC and their employers is hardly "absurd." "We cannot say that [affording protection to such an employee] is so bizarre that Congress could not have intended it." *Demarest v. Manspeaker*, 498 U.S. 184, 191 (1991) (citation and internal quotation marks omitted).

For instance, an employee may choose to report a potential violation to her employer, to bring the matter to its immediate attention for quick internal resolution. After all, SOX was enacted precisely to encourage and protect such internal reporting. *See* 18 U.S.C. § 1514A(a)(1)(C). But that same employee may also wish to alert the SEC to the matter at this early stage, to secure her right to pursue Dodd-Frank's unique financial incentives and legal protections. Indeed, Congress enacted Dodd-Frank in response to the 2008 financial crisis, and the whistleblower provision was designed precisely to motivate corporate insiders to come forward and report potential securities law violations to the SEC, in order to assist that agency in enforcing the securities laws.[7]

In particular, § 78u-6 requires the SEC to award the Dodd-Frank whistleblower a substantial

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[7] In fact, Congress received testimony that the SEC depended primarily on the tips of corporate insiders to identify and successfully prosecute claims of securities fraud. S. Rep. 111-176, at 110-11 (2010) ("In a testimony for the Senate Banking Committee, Certified Fraud Examiner and Madoff whistleblower Harry Markopolos testified in support of creating a strong Whistleblower Program. He cited statistics showing the efficiency of Whistleblower Programs: '*whistleblower tips detected 54.1% of uncovered fraud schemes in public companies.* External auditors, and the SEC exam teams would certainly be considered external auditors, detected a mere 4.1% of uncovered fraud schemes. *Whistleblower tips were 13 times more effective than external audits, hence my recommendation to the SEC to encourage *111 the submission of whistleblower tips*.' In his letter to Senator Dodd, SEC Inspector General David Kotz also recommended a similar Whistleblower Program.") (emphasis added).

bounty if her reporting of original information to that agency results in a successful administrative or judicial enforcement action. 15 U.S.C. § 78u-6(b).[8] And if an employee who reports a violation internally delays too long in reporting that information to the SEC, the SEC may learn of the information from another source. At that point, the information would no longer be "original" under Dodd-Frank and the employee would no longer qualify for a bounty.[9]

Section 78u-6 also provides the Dodd-Frank whistleblower with generous legal protection. In particular, the Dodd-Frank whistleblower enjoys a direct right of action in federal court to recover double back pay, subject to a generous six-year limitations period that can be tolled for up to ten

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[8] Section 78u-6(g) creates the SEC Investor Protection Fund. Section 78u-6(b), in turn, requires the SEC to pay a whistleblower an award from that fund, in an amount between 10% and 30% of the penalties collected by the SEC in a "covered judicial or administrative action" resulting from "original information" provided by that whistleblower. 15 U.S.C. § 78u-6(b)(1)(A)-(B).

"Original information" is information that "is derived from the independent knowledge or analysis of a whistleblower . . . and . . . is not known to the Commission from any other source . . . ." 15 U.S.C. § 78u-6(a)(3)(A)-(B). A "covered judicial or administrative action," in turn, is "any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1,000,000." 15 U.S.C. § 78u-6(a)(1).

[9] *See* n.8, above.

years. 15 U.S.C. § 78u-6(h).[10] By contrast, SOX offers none of these protections.[11] And so the employee who reports to her employer, as a SOX whistleblower, would want to qualify quickly as a Dodd-Frank whistleblower (by reporting to the SEC), before her employer may take any adverse action against her due to her internal reporting.

In short, Dodd-Frank provides the employee who reports information to her employer, and is thus a SOX whistleblower, with strong incentives to report that same information promptly to the SEC and thereby qualify as a Dodd-Frank whistleblower.

Nor is it "absurd" to assume that an employer may not know that the employee who has reported a violation internally has also reported it to the SEC.

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[10] *See* 15 U.S.C. § 78u-6(h)(1)(B)(i) (providing private right to sue in federal court for retaliation for engaging in protected activity, as defined in § 78u-6(h)(1)(A)(i)-(iii)); § 78u-6(h)(1)(B)(iii)(I)-(II) (providing statute of limitations of six years after date of violation, tolled by three years after date "when facts material to the right of action are known or reasonably should have been known," and capped by ten-year statute of repose); § 78u-6(h)(1)(C)(i)-(iii) (providing prevailing employee with reinstatement, double back pay, litigation costs, expert witness fees, and reasonable attorneys' fees).

[11] Under SOX, for example, the employee has no direct right of action and must instead file a claim with the Secretary of Labor before obtaining the right to sue in federal court. 18 U.S.C. § 1514A(b)(1)(A). And that administrative filing requirement is subject to a clipped 180-day limitations period. 18 U.S.C. § 1514A(b)(2)(D). Finally, while the prevailing employee may recover compensatory and special damages under SOX, she cannot recover multiple damages. *See* § 18 U.S.C. § 1514A(c)(1)-(2).

This is because Dodd-Frank preserves the confidentiality of a whistleblower's identity when she reports to the SEC, unless and until the disclosure of her identity is necessary in the SEC's enforcement action. 15 U.S.C. § 78u-6(h)(2)(A).[12]

In sum, the plain meaning of the disputed language is far from "absurd" and actually serves the twin aims of SOX and Dodd-Frank by encouraging an employee to report violations of the securities laws both to his employer and to the SEC.

II. THE NINTH CIRCUIT ENGAGED IN IMPERMISSIBLE JUDICIAL LEGISLATION BY EXTENDING DODD-FRANK'S WHISTLEBLOWER PROVISION TO EMPLOYEES WHO ARE NOT DODD-FRANK WHISTLEBLOWERS, THEREBY CONTRAVENING THE STATUTE'S LANGUAGE AND PURPOSE.

Having rejected § 78u-6(h)(1)(A)(iii)'s plain meaning, the Ninth Circuit then engaged in impermissible judicial legislation, by extending Dodd-Frank's whistleblower provision to employees who are not Dodd-Frank whistleblowers. In effect, the lower court substituted the word "employee" for the defined term "whistleblower." *See* App. 8a.

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[12] Moreover, the SEC allows whistleblowers to report tips through its confidential website and ensures that "[t]he SEC treats all tips, complaints and referrals as confidential and nonpublic, and does not disclose such information to third parties, except in limited circumstances authorized by statute, rule, or other provisions of law." https://www.sec.gov/about/offices/owb/owb-tips.shtml (last visited, May 24, 2017).

But the lower court had no business making such a change because "[i]t is axiomatic that the statutory definition of the term excludes unstated meanings of that term." *Meese v. Keene*, 481 U.S. 465, 484 (1987). See also *Arthur Andersen LLP*, 556 U.S. at 631 ("It is not our role to conform an unambiguous statute to what we think Congress probably intended . . . .") (internal quotation marks omitted).

Moreover, Congress chose the word "employee" in SOX's whistleblower provision, 18 U.S.C. § 1514A(a), but it did not do so when it later enacted § 78u-6 in Dodd-Frank. It must be presumed, then, that Congress's omission of the word "employee" in Dodd-Frank was deliberate. *See I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citation and internal punctuation marks omitted).

If allowed to stand, the lower court's decision would clearly eviscerate Dodd-Frank's definition of a whistleblower. But it would also contravene Congress' clear purpose of linking Dodd-Frank's robust financial incentives with that statute's robust remedial protection.[13] After all, the provision is titled "Securities whistleblower incentives *and* protection." 15 U.S.C. § 78u-6 (emphasis added). True to its title, § 78u-6 expressly limits its financial incentives and legal protection to the securities

[13] *See* notes 8 and 10, above.

"whistleblower," defined as the employee who reports to the SEC. Those incentives and remedies clearly go hand in hand.

In Congress's judgment, then, only a Dodd-Frank whistleblower should be entitled to that statute's generous incentives and related remedial protections. But the lower court has subverted this statutory purpose by severing the one from the other. In the Ninth Circuit's view, an employee may sue for retaliation under Dodd-Frank even though he is not a Dodd-Frank whistleblower and therefore does not qualify for a financial reward.

Moreover, the lower court's interpretation could effectively render SOX's whistleblower provision obsolete. Now any employee who reports internally could avoid suing under SOX and could sue instead under Dodd-Frank, to benefit from its unique remedial protections. But Congress indicated no such intent to undermine the viability of a SOX whistleblower claim when it enacted Dodd-Frank. To the contrary, Congress carefully *preserved* SOX's whistleblower provision in Dodd-Frank, by expanding SOX's administrative limitations period from 90 to 180 days. *See* Investor Protection and Securities Reform Act of 2010, Pub. L. No. 111-203, § 922(c), 124 Stat. 1848 (2010) (codified at 18 U.S.C. § 1514A(b)(2)(D)).

In sum, Congress has enacted a two-tiered statutory scheme for the protection of corporate whistleblowers. If the employee only reports the securities violation to her employer, then SOX applies. If, however, the employee also reports the

securities violation to the SEC, then he is a "whistleblower" under Dodd-Frank and becomes eligible to receive a substantial bounty and substantial legal protection for his efforts. Courts should preserve this dual statutory scheme by enforcing Dodd-Frank according to its terms.

Therefore, the Court should grant certiorari and rule that § 78u-6(h)(1)(A)(iii) applies, by its own plain terms, to the employee who reports a securities law violation both to his employer and the SEC. "We must presume that the legislature says in a statute what it means and means in a statute what it says there." *Dodd v. United States*, 545 U.S. 353, 357 (2005) (citation and internal punctuation marks omitted).

CONCLUSION

For the reasons stated above, amici respectfully request that this Court grant the petitioner's petition for certiorari.

Respectfully submitted,

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